



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

LANNY BRUSTEIN, DC

Respondent Name

SERVICE LLOYDS INSURANCE CO

MFDR Tracking Number

M4-15-2271-01

Carrier's Austin Representative

Box Number 01

MFDR Date Received

MARCH 23, 2015

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "REQUIRED TESTING REQUESTED BY THE DESIGNATED DOCTOR."

Amount in Dispute: \$78.69

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Given no violation of the Workers' Compensation Act or division rules, CorVel respectfully requests the division issue a Findings & Decision indicating the requestor, Lanny B. Brustein, DC is entitled to \$0.00 reimbursement for CPT code 95851 based on failure to meet its burden to substantiate that range of motion testing is not inclusive to the complete physical examination (99456) performed and billed by the same doctor on 08/19/14 to address extent of injury."

Response Submitted by: Service Lloyds Insurance Co.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 19, 2014	CPT Code 95851 (X3) Range of Motion Testing	\$78.69	\$78.69

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets the reimbursement guidelines for professional service.
3. 28 Texas Administrative Code §134.204, effective March 1, 2008, sets the reimbursement guidelines for workers compensation specific services.

4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 97-Charge included in another charge or service.
 - R38-Included in another billed procedure.
 - W3-Appeal/Reconsideration

Issues

1. Is the allowance of CPT code 95851 included in the allowance of code 99456-W6-RE?
2. Is the requestor entitled to additional reimbursement?

Findings

1. The insurance carrier denied reimbursement for CPT code 95851 with claim adjustment reason codes “97” and “R38.”

On the disputed date of service, the requestor billed codes 99456-W6-RE and 95851.

- CPT code 99456 is defined as “Work related or medical disability examination by other than the treating physician that includes: Completion of a medical history commensurate with the patient's condition; Performance of an examination commensurate with the patient's condition; Formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment; Development of future medical treatment plan; and Completion of necessary documentation/certificates and report..
- CPT code 95851 is defined as “Range of motion measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine).”

The requestor appended modifiers “W6” and “RE” to code 99456.

28 Texas Administrative Code §134.204(k) states “The following shall apply to Return to Work (RTW) and/or Evaluation of Medical Care (EMC) Examinations. When conducting a Division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT Code 99456 with modifier “RE.” In either instance of whether MMI/IR is performed or not, the reimbursement shall be \$500 in accordance with subsection (i) of this section and shall include Division-required reports. Testing that is required shall be billed using the appropriate CPT codes and reimbursed in addition to the examination fee.”

28 Texas Administrative Code §134.204(i)(1)(A) states “The following shall apply to Designated Doctor Examinations. (1) Designated Doctors shall perform examinations in accordance with Labor Code §§408.004, 408.0041 and 408.151 and Division rules, and shall be billed and reimbursed as follows: (C) Extent of the employee's compensable injury shall be billed and reimbursed in accordance with subsection (k) of this section, with the use of the additional modifier ‘W6’.”

28 Texas Administrative Code §134.204(n)(21) defines the “W6” modifier as “Designated Doctor Examination for Extent--This modifier shall be added to the appropriate examination code performed by a designated doctor when determining extent of the employee's compensable injury.”

The Division finds that the requestor billed the extent of injury examination in accordance with 28 Texas Administrative Code §134.204.

28 Texas Administrative Code §134.203(a)(5) states “Medicare payment policies” when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare.”

28 Texas Administrative Code §134.203(b)(1) states “For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.”

Per CCI edits, CPT code 95851 is not a component of 99456-W6-RE performed on the disputed date; therefore, the respondent's denial based upon reason codes "97" and "R38" is not supported.

2. Per 28 Texas Administrative Code §134.203(c)(1)(2), "To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications.

(1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83. For Surgery when performed in a facility setting, the established conversion factor to be applied is \$66.32.

(2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year. The following hypothetical example illustrates this annual adjustment activity if the Division had been using this MEI annual percentage adjustment: The 2006 Division conversion factor of \$50.83 (with the exception of surgery) would have been multiplied by the 2007 MEI annual percentage increase of 2.1 percent, resulting in the \$51.90 (with the exception of surgery) Division conversion factor in 2007."

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Participating Amount = Maximum Allowable Reimbursement (MAR).

The 2014 DWC conversion factor for this service is 69.98.

The Medicare Conversion Factor is 35.8228

Review of Box 32 on the CMS-1500 the services were rendered in zip code 76021, which is located in Bedford, TX; therefore, the Medicare participating amount is based on locality "Fort Worth,Texas".

The Medicare participating amount for code 95851 is \$17.70/unit.

Using the above formula, the MAR is \$27.55 X 3 units billed = \$82.65. The requestor is seeking \$78.69; this amount is recommended for additional reimbursement.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$78.69.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$78.69 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

05/27/2015
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.